

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION (TR) NO.290 OF 2017

Between:

Kudikyala Kankaiah S/o Bakkaiah, Aged about 55 years,
Gangman, O/o P.R. Sub Division, Peddapally, Karimnagar
District, r/o. Peddapally.

.... Petitioner

And

The Superintending Engineer, P.R. Circle, Karimnagar
and others.

.... Respondents

JUDGMENT PRONOUNCED ON : 07.08.2017

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : No
be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : **Yes**
to Law Reporters/Journals :
3. Whether Their Ladyship/Lordship wish to : No
see fair Copy of the Judgment ? :

***HON'BLE SRI JUSTICE P.NAVEEN RAO**

+ WRIT PETITION NO.290 OF 2017

% 07.08.2017

Kudikyala Kankaiah S/o Bakkaiah, Aged about 55 years,
Gangman, O/o P.R. Sub Division, Peddapally, Karimnagar
District, r/o. Peddapally.

.... Petitioner

And

\$ The Superintending Engineer, P.R. Circle, Karimnagar
and others.

.... Respondents

!Counsel for the petitioner : Sri D.Balakishan Rao

Counsel for the Respondents: Govt.Pleader for respondents

<Gist :

>Head Note:

? Cases referred:

1. AIR 1970 AP 132
2. (1984) 2 SCC 433
3. (1997) 3 SCC 636
4. (1996) 11 SCC 603
5. (2004) 1 SCC 121
6. (2005) 8 SCC 747
7. (2007) 1 SCC 324
8. (2013) 11 SCC 67



HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) No.290 OF 2017

ORDER:

Petitioner was appointed as Gangman on 31.07.1976. He was placed under suspension, by order dated 25.10.2004 w.e.f. 07.09.2014, on which date, crime was registered against the petitioner. Petitioner was shown as Accused no.1 in S.C.No.764 of 2005 on the file of III Additional Sessions Judge, Karimnagar. The trial Court convicted and sentenced him by judgment dated 18.10.2006. On appeal, this Court by judgment dated 28.02.2012 allowed the appeal setting aside the conviction and sentence awarded by the trial Court. After acquittal, suspension was revoked and petitioner was reinstated to service on 31.05.2012. On revocation of suspension, petitioner claimed for treatment of the period of suspension as on duty. The request for payment of back wages was rejected by the Government vide Memo dated 03.01.2013. Challenging the same, petitioner invoked the jurisdiction of Andhra Pradesh Administrative Tribunal by filing O.A.No.1151 of 2013, since transferred to this court.

2. Heard learned counsel for petitioner and learned Government Pleader for Services II.

3. Learned counsel for petitioner contended that consequent to the acquittal granted by the appellate Court, the suspension of the petitioner becomes untenable and, therefore, petitioner is entitled for treatment of the entire period of his suspension as on duty and for payment of full pay and allowances due and payable to him. In

support of his contention, he placed reliance on the provision in FR-54A; earlier decision of A.P.Administrative Tribunal in O.A.No.543 of 2011; decision of Full Bench of this Court in **the District Manager, Andhra Pradesh State Road Transport Corporation, Bhimavaram v. Labour court, Guntur and another**¹, and the decision of Supreme Court in **Brahma Chandra Gupta v. Union of India**².

4. Per contra, learned Government Pleader submits that petitioner was involved in a crime of committing murder. The crime was registered on account of alleged involvement of the petitioner outside the employment. The trial Court convicted the petitioner in the judgment rendered on 18.10.2006, whereas the appeal was allowed on 28.02.2012. Petitioner was under the cloud of conviction and sentencing him. Ordinarily, petitioner would have been dismissed from service based on conviction, but was continued only under the suspension. Thus, for the entire period when he was facing criminal proceedings resulted initially in conviction and later on acquittal by the appellate Court, petitioner is not entitled to claim the benefits of full pay and allowances for the period of suspension. In support of his contention, learned Government Pleader placed reliance on provisions contained in FR-54 B.

5. The order under challenge is made in response to the proposals submitted by the Superintending Engineer, Panchayat Raj. The Superintending Engineer, Panchayat Raj sent the letter

¹ AIR 1970 AP 132

² (1984) 2 SCC 433

on 15.10.2012 and sought for clarification from the Engineer-in-Chief whether the petitioner was eligible for consequential benefits and payment of salary for the suspension period on the basis of acquittal granted by the High Court.

6. Thus, the issue for consideration is whether the petitioner is entitled to payment of pay and allowances for the period when he was placed under suspension.

7. Before considering the claim vis-à-vis provision contained in Fundamental Rules, I deem it proper to consider the principles laid down by this Court and the Hon'ble Supreme Court on the entitlement of the employee claiming back-wages consequent to the acquittal granted to him by the competent Court in criminal proceedings, pending which, an employee was placed under suspension.

8.1. In **THE DISTRICT MANAGER, APSRTC**, issue for consideration before the full bench of this court was, what is the effect of acquittal in criminal case on payment of pay and allowances for the period of suspension to an employee of APSRTC placed under suspension pending enquiry into criminal offence after he was acquitted. On interpretation of relevant service regulations of APSRTC, the Full Court held that consequent to acquittal the employee is entitled to full pay and allowances.

8.2. In **BRAHMA CHANDRA GUPTA** (supra), the appellant was tried for the offence under Section 19(f) of Indian Arms Act. Pending investigation he was suspended from service. The trial court convicted and sentenced him. Conviction led to dismissal

from service with effect from 31-10-1964. On appeal, conviction and sentence was set aside. Consequent to acquittal granted by the appellate court, by order dated 3-9-1965, he was reinstated to service. The concerned authority divided the period of suspension of the appellant into two parts, the first being from May 14, 1962 to October 31, 1964 when appellant was acquitted and the second being from October 31, 1964 to September 3, 1965 when he was reinstated in service. With regard to the latter part, the concerned authority directed the payment of full salary after giving credit for the suspension allowance that was drawn by him. For the period from May 14, 1962 to October 31, 1964, the concerned authority was of the opinion that the appellant could not be said to be fully exonerated and, therefore, a direction was given that the appellant should be given three-fourth of his salary for the period of suspension. Supreme Court held:

“The appellant was a permanent UDC who has already retired on superannuation and must receive a measure of socio-economic justice. Keeping in view the facts of the case that the appellant was never hauled up for departmental enquiry, that he was prosecuted and has been ultimately acquitted, and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal, and further that even for the period in question the concerned authority has not held that the suspension was wholly justified because three-fourth of the salary is ordered to be paid, we are of the opinion that the approach of the trial court was correct and unassailable. The learned Trial Judge on appreciation of facts found that this is a case in which full amount of salary should have been paid to the appellant on his reinstatement for the entire period. We accept that as the correct approach. We accordingly allow this appeal, set aside the judgment of first appellate court as well of the High Court and restore the one of trial court with this modification that the amount decreed shall be paid with 9 per cent interest p.a. from the date of suit till realisation with costs throughout.”(Paaragraph 6)

8.3. In **KRISHNAKANT RAGHUNATH BIBHAVNEKAR Vs STATE OF MAHARASHTRA AND OTHERS**³, the appellant while working as Compositor in the Government of India Printing Press, was charged for offences punishable, inter alia, under Section 409 of IPC. Pending trial, he was kept under suspension and was paid subsistence allowance. After his acquittal, the appellant was reinstated but the respondents did not grant the consequential benefits to him. Consequently, the appellant approached the Administrative Tribunal. The Tribunal by the order dated 27.4.1995 in OA No. 40 of 1992, dismissed the application. Supreme Court held as under:

“4..... The very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to the prosecution of him for the offences under the Indian Penal Code. If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges : whether the Government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal , is entitled to be reinstated with consequential benefits? ***In our considered view, this grant of consequential benefits with all back-wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course, on his acquittal.*** Two courses are open to the disciplinary authority, viz., it may enquire into misconduct unless, the self-same conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty, (and on payment of subsistence allowance etc.) Rules 72(3), 72(5) and 72(7) of the Rules give a discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service, he would not be

³ (1997) 3 SCC 636

entitled to the consequential benefits. As a consequence, he would not be entitled to the benefits of nine increments as stated in para 6 of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc. The appellant is also not entitled to any other consequential benefits as enumerated in paragraphs 5 and 6 of the additional affidavit.”
(emphasis supplied)

8.4. In **RANCHHODJI CHATURJI THAKORE Vs SUPERINTENDENT ENGINEER, GUJARAT ELECTRICITY BOARD, HIMMATNAGAR (GUJARAT) AND OTHERS**⁴, Supreme Court held as employee was involved himself in a crime, though later acquitted, he had disabled himself from rendering the service on account of conviction and, therefore, not entitled to payment of back-wages.

8.5 In **UNION OF INDIA AND OTHERS Vs JAIPAL SINGH**⁵, The respondent was involved in a criminal case and he was charge-sheeted for an offence under Section 302 read with Section 34 IPC along with his brother and though he was convicted by the learned Additional Sessions Judge, Rewari, on further appeal before the High court, by judgment dated 5-3-1997, the Division Bench of the High Court returned the verdict of acquittal. The grievance of the employee was he was not reinstated even though he was acquitted in Criminal case. Supreme Court held:

“4., we are in respectful agreement with the view taken in *Ranchhodji* [(1996) 11 SCC 603 : 1997 SCC (L&S) 491] . ***If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise.*** On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the

⁴ (1996) 11 SCC 603

⁵ (2004) 1 SCC 121

department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, ***the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without advertng to all such relevant aspects and considerations..***"

(emphasis supplied)

8.6 In **BALDEV SINGH Vs UNION OF INDIA AND OTHERS**⁶, the appellant was enrolled in the Indian Army on 13-9-1978. On 30-3-1987 he was arrested in a criminal case for offence punishable under Sections 302, 34 and 452 of the Penal Code. The appellant was convicted by the trial court. However, his appeal was accepted by the High Court and he was acquitted vide order dated 26-3-1992. The appellant alleges that he was released from the jail on 4-4-1992 and that he had reported to his unit along with a copy of the judgment on the next day. He further stated that he was reinstated on the strength of such acquittal and continued in service, but his pay and allowances were not fixed or released. On 30-9-1993 he was discharged from the service. He claimed to have completed the requisite period of service from the date of enrolment to the date of discharge and claimed entitlement to the release of arrears of salary for the period from 30-3-1987 to 30-9-1993 as also pension for the subsequent periods. Supreme Court held:

⁶ (2005) 8 SCC 747

“7. As the factual position noted clearly indicates, the appellant was not in actual service for the period he was in custody. Merely because there has been an acquittal does not automatically entitle him to get salary for the period concerned. This is more so, on the logic of no work no pay. It is to be noted that the appellant was terminated from service because of the conviction. Effect of the same does not get diluted because of subsequent acquittal for the purpose of counting service. The aforesaid position was clearly stated in *Ranchhodji Chaturji Thakore v. Supdt. Engineer, Gujarat Electricity Board* [(1996) 11 SCC 603 : 1997 SCC (L&S) 491]”.

(emphasis supplied)

8.7. In **BANSHI DHAR Vs STATE OF RAJASTHAN AND ANOTHER⁷**, the appellant was working as Patwari. On an allegation that he had sought illegal gratification, a raiding party laid a trap and he was found to have accepted illegal gratification. He was placed under suspension. As he was convicted in Criminal Case No. 17 of 1979, he was dismissed from service by an order dated 3-10-1987. His appeal was allowed. In the meanwhile i.e. in the year 1998, the appellant reached his age of superannuation. He filed Civil Writ Petition No. 3111 of 2002 before the High Court of Rajasthan. Learned Single Judge of the High Court directed that in the event the appellant files a representation before the competent officer with regard to pension, the same may be considered within a period of three months there from. An appeal preferred there against was dismissed by the Division Bench. Same was challenged in Supreme Court. While so he filed a representation before the Collector. The Collector allowed the pensionary benefits. Supreme Court held:

“8. It may be true that the reason for long pendency of the trial or the criminal appeal filed by him may not be attributed to his acts of omission and commission but the fact remains that the entire period between 13-7-1976

⁷ (2007) 1 SCC 324

and the date when he reached his age of superannuation he did not work. He was placed under order of suspension validly from 1976 to 2-10-1987. Legality of the order of dismissal on the basis of the judgment of conviction and sentence dated 25-2-1985 has also not been questioned. It is true that his services were dispensed with as he had been convicted in a criminal case involving grave misconduct. On his acquittal, he was to be reinstated in service. He has been directed to be paid his pensionary benefits. The entire period during which he remained under suspension, thus, would be considered for calculating his pensionary benefits. Continuity of his service has also not been denied to him. **The only question which arises for consideration, as noticed hereinbefore, is as to whether in a situation of this nature back wages should have been granted to him.**

9. No hard-and-fast rule can be laid down in regard to grant of back wages. Each case has to be determined on its own facts.

10. It is now a trite law that judgment of acquittal itself would not have exonerated him of the charges levelled against him. He could have been proceeded against in a departmental proceeding. (See *Manager, Reserve Bank of India v. S. Mani* [(2005) 5 SCC 100 : 2005 SCC (L&S) 609] and *Commr. of Police v. Narender Singh* [(2006) 4 SCC 265 : 2006 SCC (L&S) 686].
(emphasis supplied)

8.8. In **STATE BANK OF INDIA AND ANOTHER Vs. MOHAMMED ABDUL RAHIM**⁸, the respondent-writ petitioner while working as an Assistant (Accounts) in State Bank of India at Thanjavur Branch was convicted of the offences under Section 498-A of the Penal Code, 1860 (for short "IPC") and Section 4 of the Dowry Prohibition Act, 1961 on 3-11-1997. Following the aforesaid conviction, he was discharged from service by an order dated 7.6.1999. Appeal filed against the conviction was allowed based on the finding that the prosecution had failed to prove its case beyond reasonable doubt. Consequently, the respondent was reinstated in service on 7-11-2002. However, back wages for the period that he had remained out of service were not granted. Aggrieved by denial

⁸ (2013) 11 SCC 67

of back-wages for the period of out of employment he filed the writ petition. The learned Single Judge of the High Court has taken the view that the respondent-writ petitioner was entitled to the benefit of back wages for the period that he had remained out of employment following his conviction in a criminal charge, which was affirmed in the letters patent appeal. Supreme Court held:

“11. In *Banshi Dhar* [(2007) 1 SCC 324 : (2007) 1 SCC (L&S) 205] this Court answered the question against the employee by holding that grant of back wages is not automatic and such an entitlement has to be judged in the context of the totality of the facts of a given case. It is on such consideration that back wages were declined. In the present case, it will not even be necessary for the Court to perform the said exercise and delve into the surrounding facts and circumstances for the purpose of adjudication of the entitlement of the respondent to back wages in view of the provisions of Section 10(1)(b)(i) of the Act. The said provisions impose a clear bar on a banking company from employing or continuing to employ a person who has been convicted by a criminal court of an offence involving moral turpitude. No discussion as to the meaning of the expression “moral turpitude” is necessary having regard to the nature of the offences alleged against the respondent, namely, under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961. No doubt, the respondent was not in custody during the period for which he has been denied back wages inasmuch as the sentence imposed on him was suspended during the pendency of the appeal. But what cannot be lost sight of is that the conviction of the respondent continued to remain on record until it was reversed by the appellate court on 22-2-2002. During the aforesaid period there was, therefore, a prohibition in law on the appellant Bank from employing him. If the respondent could not have remained employed with the appellant Bank during the said period on account of the provisions of the Act, it is difficult to visualise as to how he would be entitled to payment of salary during that period. ***His subsequent acquittal though obliterates his conviction, does not operate retrospectively to wipe out the legal consequences of the conviction under the Act. The entitlement of the respondent to back wages has to be judged on the aforesaid basis. His reinstatement, undoubtedly, became due following his acquittal and the same has been granted by the appellant Bank.***

12. The respondent was acquitted on 22-2-2002, the demand for reinstatement was made by him on 22-4-2002 and he was reinstated in service by the appellant bank on 7-11-2002. On the view that we have taken, at the highest, what can be said in favour of the respondent is that he is entitled to wages from the

date he had lodged the demand for the same following his acquittal, namely, from 22-4-2002, until the date of his reinstatement, if the same has not already been granted by the appellant Bank.”
(emphasis supplied)

9. In view of subsequent pronouncements of Hon'ble Supreme Court, the decisions relied by petitioner do not come to his rescue. As held by Supreme court in precedent decisions grant of back-wages for the period of suspension consequent to acquittal cannot be as a matter of course (**Krishnakant Raghunath Bibhavnekar** - supra). The employer is well within his right to deny back-wages for the period employee was out of service (**Union of India** - supra). Merely because there was acquittal does not automatically entitle employee to claim salary for the period concerned. This is more so on the logic of no work no pay (**Baldev Singh** - supra). No hard and fast rule can be laid down in regard to grant of back-wages. Each case has to be determined on its own facts (**Banshi Dhar** - supra). Subsequent acquittal though obliterates conviction, does not operate retrospectively to wipeout the legal consequences of conviction and the entitlement of employee for back-wages has to be judged on the aforesaid basis (**State Bank of India** - supra).

10. In the case on hand, the involvement of petitioner in criminal case is not at the instance of employer. He was convicted and pain of conviction continued till he was acquitted in his appeal. Ordinarily, employee would be removed on conviction, but in the case on hand, employer waited for criminal appeal to be decided and, therefore, continued him under suspension. Having regard to these peculiar facts, the decision of Government denying back-wages cannot be faulted.

11. Further, the petitioner is governed by the Fundamental Rules. FR-54, FR-54A, FR-54B deal with various contingencies as to how the period of suspension can be regulated and when the full pay and allowance or partial pay and allowance can be paid to the employee. Rule 54-B deals with regulation of period of suspension of an employee. Sub rule (5) of 54-B indicates that in cases other than those falling under sub rules (2) and (3), the employee is not entitled to pay and allowances other than the subsistence allowance already paid. This case is not covered by the exception provided in Sub Rules (2) and (3). According to sub rule (7), in cases falling under sub rule (5) the period of suspension shall not be treated as a period spent on duty. Exceptions to denial of pay and allowances for suspension period are attracted in a case where employee dies before the disciplinary or Court proceedings instituted against him are concluded (sub-rule 2) or the competent authority holds the suspension of the employee as wholly unjustified (sub-rule 3). For the period when he was placed under suspension, till he was acquitted, suspension from service of petitioner cannot said as unsustainable/illegal. Back-wages for the period of suspension can be granted only if such period is treated as on duty. Petitioner has not rendered any work till he was reinstated. FR 54-B (5) & (7) are applicable to the case of the petitioner and in terms thereof, question of regularization of the period of suspension and grant of all benefits does not arise.

12. Thus, the claim of petitioner is not valid. I see no error in the decision of Government impugned herein. Writ Petition is liable to be dismissed. It is accordingly dismissed.

Miscellaneous Petitions, if any, pending in this Writ Petition (TR) shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 07.08.2017

Note: LR copy to be marked - Yes

B/o.
Kkm



HON'BLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION (TR) No.290 OF 2017

Date: 07.08.2017

kkm